

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 93-0302 CSET**

**Controlled Substance Excise Tax – Imposition
For Tax Period: 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax — Imposition

Authority: IC 6-7-3-5; IC 35-48-4-11; IC 6-8.1-5-1
Bryant v. State, 660 N.E.2d 290 (Ind. 1995)

Taxpayer protests the imposition of Indiana's controlled substance excise tax.

STATEMENT OF FACTS

In the course of an ongoing narcotics investigation, on December 27, 1992, police obtained a warrant to search taxpayer's residence. During this search, police discovered and seized several packages - each containing a quantity of marijuana. As a result, on January 7, 1993, police arrested taxpayer for possession and dealing marijuana. Following taxpayer's arrest, the Department assessed Indiana's controlled substance excise tax against taxpayer on 407.28 grams of marijuana. At the statutory rate of \$40.00 per gram, the base tax deficiency amounted to \$16,291.20. With the addition of the statutory 100% penalty, taxpayer's total liability came to \$32,582.40. Taxpayer protests this assessment.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

Taxpayer's main argument concerns the existence of the marijuana at issue. To wit, taxpayer believes the marijuana seized by the police did not exist. According to taxpayer, police found the marijuana in a gym bag in taxpayer's truck. Throughout the entire legal process – from police discovery to subsequent criminal prosecution – taxpayer says neither the police nor the

prosecutor ever produced the seized marijuana. Taxpayer, however, has failed to produce evidence in support of this contention.

Additionally, in previous correspondence with the Department, taxpayer has argued that Indiana's controlled substance excise tax (CSET) violates the double jeopardy protections provided by the United States Constitution. And as such, this assessment should be invalid.

The Indiana Supreme Court found the Department's assessment of CSET could, in certain situations, result in double jeopardy. See *Bryant v. State*, 660 N.E.2d 290 (Ind. 1995). However, for taxpayer's double jeopardy claim to prevail, taxpayer must show that **prior to the Department's assessment** taxpayer either had entered a plea, or at trial, the jury had been impaneled and sworn in.

The Department made its jeopardy assessment on March 13, 1993. Taxpayer has not offered any evidence showing this assessment placed taxpayer in jeopardy, for the same offense, a second time.

As IC 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C 841 through 21 U.S.C. 852. The tax does not apply to a controlled substance that is distributed, manufactured, or dispensed by a person registered under IC 35-48-3.

Possession of marijuana is defined in IC 35-48-4-11:

Section 11. A person who:

- (1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, or hashish;

commits possession of marijuana , hash oil, or hashish, a Class A misdemeanor.

Pursuant to IC 6-8.1-5-1, the notice of proposed assessment is prima facie evidence that the Department's claim is valid. The burden of providing information rebutting this assessment rests with taxpayer. In this instance, taxpayer has failed to meet his burden of proof.

FINDING

Taxpayer's protest is denied.